

Atty Dkt. No.: 10010466-3
USSN: 10/810,396

REMARKS

Formal Matters

Claims 1-11 and 13-20 are pending.

Applicants respectfully request consideration of the pending claims in view of the remarks made below.

Response to Restriction Requirement

In the Restriction Requirement, the Examiner required election of one of the following groups of claims:

- Group I: claims 1-2, 4-9, 13, 17 and 19, drawn to an ionization chamber;
Group II: claims 3, 10, 14, 16, 18 and 20, drawn to a system for analyzing a sample;
Group III: claims 11, drawn to a method of reducing interaction of a reactive analyte.

Applicants hereby elect to prosecute the claims of Group I, with traverse.

The Applicants respectfully request rejoinder of all claim groups since they all share the same characteristic: an ion source comprising a super alloy.

Claims of Group I are directed to an ion source comprising a super alloy, claims of Group II are directed to a system having an ion source comprising a super alloy, and claims of Group III are directed to a method of making an ion source comprising a super alloy. While the claims may differ in scope and focus, they each recite a single characteristic: an ion source comprising a super alloy.

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The MPEP is very clear with regard to restriction of claims having the same characteristic:

"where the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction there between should never be required. This is because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition." M.P.E.P. § 806.03
(emphasis added; the Applicants note that the term never is used).

Accordingly, in view of the explicit guidance set forth in M.P.E.P. § 806.03, this Restriction Requirement may be withdrawn.

If this Restriction Requirement is to be maintained, the Applicants respectfully request that the Examiner state, for the record, why the Office thinks that the instant claims *do not* share the same characteristic. If this cannot be done, pursuant to M.P.E.P. § 806.03, this Restriction Requirement should be withdrawn.

Further, the Applicants note that the Office has attempted to classify the instant claims into three distinct groups of claims. However, as discussed above, the instant claims all share a single characteristic (i.e., an ion source comprising a super alloy). This characteristic allows all pending claims to be searched together *without undue burden*.

Rejoinder of the claims for prosecution in the present application is respectfully requested.

Nothing in the foregoing discussion should be construed as indicating that the claims of groups I, II and III are obvious in view of each other.

Applicants reserve the right set forth in 37 C.F.R. §1.114 and M.P.E.P. §818.03(c) to petition the Commissioner for review of the requirement, which petition may be deferred until after final action on or allowance of claims to the invention elected.

Should the restriction requirement be maintained nonetheless, Applicants expressly reserve the right under 35 USC §121 to file one or more divisional applications directed to the non-elected subject matter during the pendency of this application.

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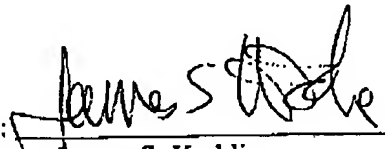
CONCLUSION

The Applicants respectfully submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone Timothy Joyce at 650 485 4310.

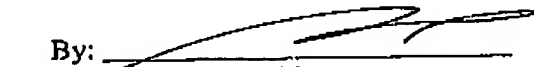
The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-1078.

Respectfully submitted,

Date: 10/20/04

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